AF/2854
IFW

Docket No.: A-2794

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MAIL STOP: APPEAL BRIEF-PATENTS

By: _____ Date: May 20, 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

Applic. No.	:	09/833,349 Confirmation No.: 3798
Inventor	:	Oliver Gottschalt et al.
Filed	:	April 12, 2001
Title	:	Method of Using a Printing Plate
TC/A.U.	:	2854
Examiner	:	Leslie J. Evanisko
Customer No.	:	**24131**

Hon. Commissioner for Patents
Alexandria, VA 22313-1450

BRIEF ON APPEAL

S i r :

This is an appeal from the final rejection in the Office Action dated November 21, 2003, finally rejecting claims 5 and 7-11.

Appellants submit this *Brief on Appeal* in triplicate, including payment in the amount of $330.00 to cover the fee for filing the *Brief on Appeal*.

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Real Party in Interest:

This application is assigned to Heidelberger Druckmaschinen AG of Heidelberg, Germany. The assignment was recorded under Reel/Frame Nos. 013994/0929 on April 28, 2003.

Related Appeals and Interferences:

No related appeals or interference proceedings are currently pending which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

Status of Claims:

Claims 5 and 7-11 are rejected and are under appeal. Claim 6 was cancelled in an amendment filed October 8, 2003. Claims 1-4 and 12-22 are withdrawn from consideration.

Status of Amendments:

No claims were amended after the final Office Action. A *Response under 37 CFR §1.116* was filed on February 18, 2004. The Primary Examiner stated in an *Advisory Action* dated March 29, 2004, that the request for reconsideration had been considered but did not place the application in condition for allowance.

Summary of the Invention:

As stated in the first paragraph on page 1 of the specification of the instant application, the invention relates to a method of using a printing plate, an imaging machine suitable for implementing the method and for setting an image on a printing plate, a printing machine suitable for implementing the method and having a magnetic cylinder for holding a printing plate, and a method of producing a printing plate formed as a flexographic printing plate.

With reference to the drawings, appellants explained on page 13 of the specification, that an imaging machine 1 has a rotating magnetic cylinder 2, which holds a printing plate 3 by magnetic attraction on the circumferential surface thereof. The printing plate 3 is a flexographic printing plate and is formed of a carrier layer 4 which is dimensionally stable and, nevertheless, is bendable around the magnetic cylinder 2, and a printing layer 5 which is non-destructively and non-detachably joined to the carrier layer 4, for example, by adhesive bonding, and often referred to as a printing block or cliché. Before the printing layer 5 was joined to the carrier layer 4, a rear side of the printing layer 5 was exposed over virtually the entire area thereof to ultraviolet (UV) light, in order to create a cured and stable base layer within the printing layer 5 for the elevated printing-image areas. The

carrier layer 4 is formed of a material which can be attracted magnetically by the magnetic cylinder 2 and can have magnetic or ferromagnetic properties. The carrier layer 4 is preferably formed as a thin steel sheet. The printing layer 5 is formed of a flexible plastic material, elastomer, polymer, silicone or rubber and leaves an uncovered edge strip 6 of the carrier layer 4 free.

Appellants outlined on page 14 of the specification, line 20, that, also conceivable is a multilayer construction of the printing layer 5 (a so-called sandwich construction), for example, of two differently compressible types of plastic material.

It is further stated on page 14 of the specification, line 24, that, in a construction of the imaging machine 1 as a digital plate-exposer, the printing layer 5 may be formed of a photopolymer, which is exposed locally to UV light by an imaging tool 7, which cures printing-image areas on the printing layer 5 and forms a latent printing image, not yet ready to print, on the printing plate 3.

Appellants stated on page 15 of the specification, line 5, that the imaging machine 1 may also be a developing machine, however, by which the aforementioned latent printing image is

developed, due to the fact that the non-printing areas on the printing layer 5, which have not been exposed to the UV light, are deepened. If the deepening of the non-printing areas is performed by a washing process, the imaging tool 7 in the imaging machine 1 constructed as a developing machine may be a rotating brush, which removes the material of the printing layer 5 located between the printing image areas. If the removal of the non-exposed and non-cured polymer from the printing layer 5 is performed by blowing it away, the imaging tool 7 in the imaging machine 1 constructed as a developing machine may be an air knife. Regardless of whether the development of the latent printing image on the printing layer 5 is performed by washing out or blowing away material in the printing layer 5 which was not cured by the exposure, the result, in any case, is a relief on the printing layer 5 which corresponds to the printing image and is formed by the elevated printing-image areas which have been cured and have accordingly remained in place.

As set forth on page 16 of the specification, line 1, the imaging machine 1 can also be constructed, however, as a digital engraving machine, by which non-printing areas are engraved as depressions into the printing layer 5. A printing layer 5 formed of rubber or an elastomer is particularly suitable for imaging by engraving. In the imaging machine 1

constructed as an engraving machine, the imaging tool 7 may be a laser, preferably a YAG or CO_2 laser, by the laser beam of which the printing layer 5 is deepened at the non-printing areas, due to the fact that the laser beam partly burns and evaporates the printing layer 5 at these areas.

It is further mentioned on page 16 of the specification, line 12, that the imaging machine 1 is preferably used for setting an image digitally on the printing plate 3 (computer-to-plate).

Appellants also explained on page 16 of the specification, line 15, that, regardless of whether the imaging machine 1 is constructed as the plate-exposing machine, the developing machine or the engraving machine, the printing plate 3 rotates with the magnetic cylinder 2, firmly held magnetically on the latter during the imaging process, i.e., during the exposure, the washing out, the blowing away or the engraving, while the imaging tool 7 acts upon the printing layer 5 and, precisely stated, on the front side of the latter.

It is set forth in the last paragraph on page 16 of the specification, line 24, that, after an image has been set on the printing plate 3, the latter can be removed from the magnetic cylinder 2, taken out of the imaging machine 1 and

fixed to a magnetic cylinder 8 of a printing machine 9 shown in Fig. 2.

Appellants outlined on page 17 of the specification, line 4, that the printing machine 9, constructed as a rotary printing machine, includes a sheet feeder 10, a sheet delivery 11, at least one offset printing unit 12 and a flexographic printing unit 13 which is used as a varnishing unit and which contains the magnetic cylinder 8 with the printing plate 3 located thereon, which is used as a varnishing plate and set with an image ready for printing. The magnetic cylinder 8 is used as an applicator cylinder for applying a varnish or comparable liquid coating to a sheet printing material 15 which, in the process, is transported past the magnetic cylinder 8 by an impression cylinder 14 associated with the magnetic cylinder 8. Fig. 2 illustrates the magnetic cylinder 8 with the printing plate 3 already fastened thereon.

As set forth in the last paragraph on page 17 of the specification, line 18, Figs. 3 and 4 depict a method step preceding the state of Fig. 2 wherein the printing plate 3 is fixed to the magnetic cylinder 8. As shown in Figs. 3 and 4, a plate feeding device or feeder 16 constructed as a feed table can be set against the magnetic cylinder 8 from time to time. The plate feeding device 16, after fulfilling the purpose

thereof, which is further explained hereinbelow, can be taken away from the magnetic cylinder 8 again and, for example, put down on the floor, as shown in Fig. 2. When the plate feeding device 16 is set against the magnetic cylinder 8 (note Figs. 3 and 4), it is supported at both ends of the magnetic cylinder 8 on a support 17 formed, respectively, by a shaft or axle journal of the magnetic cylinder 8. For this purpose, the plate feeding device 16 has, at each end thereof, a supporting shell 18, having a concave rounding which rests on the support 17 and partly surrounds the latter with an in-register or exact fit. The cheek-shaped supporting shell 18 engages in an annular groove 19 formed in the support 17.

Appellants outlined on page 18 of the specification, line 11, that, when the plate feeding device 16 is resting against the support 17, it is possible to rotate the magnetic cylinder 8 about the central axis thereof until a clamping device 20 belonging to the magnetic cylinder 8 is located in a rotary position relative to the plate feeding device 16 which is suitable for the printing plate 3 resting on the plate feeding device 16 to be inserted into the clamping device 20. The suitable rotary position is reached when an opening between clamping faces of a rail-like clamping support 21 and a clamping jaw 22 which can be moved relative to the clamping support 21 and belongs to the clamping device 20 is located in

a straight or vanishing line of a supporting face 23 of the plate feeding device 16. When the magnetic cylinder 8 and the plate feeding device 16 assume this position relative to one another, the printing plate 3 on the supporting face 23 can be pushed into the clamping device 20 in a direction towards the magnetic cylinder 8 and between the clamping support 21 and the clamping jaw 22 until the printing plate 3 reaches a clamping position, having been pushed in a straight line and without any deformation of the flat printing plate 3. When, after reaching the clamping position, a front plate edge of the printing plate 3, formed by the edge strip 6, is located between the clamping support 21 and the clamping jaw 22, the clamping jaw 22 is pressed against the edge of the plate and against the clamping support 21 by tightening a screw 24 belonging to the clamping device 20 and passing through the clamping jaw 22, which clamps the printing plate 3 firmly.

It is stated on page 19 of the specification, line 13, that, in order to secure the relative position between the magnetic cylinder 8 and the plate feed device 16 required in order to insert the printing plate 3 into the clamping device 20, the plate feeding device 16 has, at each end thereof, a securing device 25, respectively, formed as a latch. The securing device 25 includes a latching pin 26 which is spring-loaded on the plate feeding device 16 in a direction towards the

magnetic cylinder 8 and fitted so that it can be moved on the plate feeding device 16 and which, when the magnetic cylinder 8 is rotated into the required relative position, slides along on the circumferential surface of the magnetic cylinder 8 and, as a result of the spring loading thereof, latches into a latching hole 27 or latching groove which is formed in the circumferential surface of the magnetic cylinder 8, the instant of time that the magnetic cylinder 8 has reached the required rotary position. The latching pin 26, constructed as a so-called spring pin, can be pulled out of the latching hole 27, overcoming the spring loading, after the printing plate 3 has been firmly clamped on the magnetic cylinder 8, so that the magnetic cylinder 8 can again be rotated in relation to the plate feeding device 16. When the printing plate 3 is being displaced on the supporting face 23, one side edge of the printing plate 3 is guided perpendicularly to the axis of rotation of the magnetic cylinder 8 by a rail-like side stop 28 arranged on the supporting face 23.

Appellants outlined on page 20 of the specification, line 13, that the magnetic cylinder 8 is equipped with a register system 29, which includes register pins 30 and 31. Each of the register pins 30 and 31 protrudes from the clamping support 21 and, with the head thereof, into a cut-out 32 formed in the

rail-like clamping jaw 22. Each of the register pins 30 and 31 engages in a respective U-shaped register cut-out 33, 34, which is cut out of the edge of the plate formed by the edge strip 6 and, for example, has been stamped out of the carrier layer 4 before the image was set on the printing layer 5 in the imaging machine 1. When the printing plate 3 is being displaced on the supporting face 23 thereof into the clamping device 20, the register cut-outs 33 and 34, which are open towards the clamping device 20 in the thrust direction of the printing plate 3, are slipped over the register pins 30 and 31, the center spacing of which corresponds to the register cut-outs 33 and 34, so that inner edges of the register cut-outs 33 and 34 come to rest against the register pins 30 and 31, which aligns the printing plate 3 accurately in register relative to the magnetic cylinder 8 before it is firmly clamped. Introducing the register cut-outs 33 and 34 into the carrier layer 4, which is formed of sheet steel, ensures high dimensional stability of the register cut-outs 33 and 34. After the printing plate 3 has been clamped firmly in the clamping device 20, the magnetic cylinder 8 is rotated in counterclockwise direction with respect to Fig. 3, so that the magnetic cylinder 8 pulls the printing plate 3 off the plate feeding device 16, and the printing plate 3 nestles over the length thereof against the circumferential surface of the magnetic cylinder 8, it being possible for this action of

pulling on the printing plate 3 to be supported by an element, for example, a pressing roller, which presses the printing plate against the magnetic cylinder 8.

Appellants explained on page 21 of the specification, line 20, that the magnetic cylinder 8 is fitted with magnets 35 to 40, which are arranged in rows parallel to the axis of the magnetic cylinder 8 and in rows extending in the circumferential direction of the magnetic cylinder 8. The magnets 35 to 40 are powerful permanent magnets, which are embedded in the circumferential surface of the magnetic cylinder 8 so that they terminate flush with this circumferential surface, the individual magnets 35 to 40 being separated from one another by longitudinal webs 41 and 42 and by transverse webs 43 and 44 belonging to the magnetic cylinder 8. The material of the magnets 35, 36 and 40 located closest to the clamping device 20 is more highly magnetized than the material of the magnets 37 to 39, which are the same size as one another, are arranged between the magnets 35, 36 and 40 and are distributed at constant intervals over the circumference of the magnetic cylinder 8. The magnetic field or the energy density and the magnetic attraction of each of the magnets 35, 36 and 40 which are immediately adjacent to the clamping device 20 and, for example, can be neodymium-iron-boron or samarium-cobalt magnets, is therefore greater

than the magnetic field and the attraction of the other magnets 37 to 39 which are placed farther away from the clamping device 20 and which, for example, can be hard ferrite magnets.

Appellants stated on page 22 of the specification, line 18, that, in an embodiment which differs from the illustrated exemplary embodiment, electromagnets can also be used instead of the permanent magnets, being constructed so as to correspond to the permanent magnets in terms of the arrangement in rows and magnetic strength, and being capable of being switched on and off as required. The permanent magnets and electromagnets can also be fixed in combination to the magnetic cylinder 8.

It is outlined on page 23 of the specification, line 1, that, when the magnetic cylinder 8 assumes that rotary position relative to the plate feeding device 16 which is determined by the securing device 25, there is, on a circumferential section of the magnetic cylinder 8 which is formed by the clamping support 21 and located between the plate feeding device 16 and the clamping device 20, no magnet which would be capable of pulling the front edge of the printing plate 3, which projects beyond the supporting face 23 in the direction of the clamping device 20, into contact with the magnetic cylinder 8, i.e.,

onto the clamping support 21. In other words, between the clamping jaw 22 and the register system 29, on the one hand, and the plate feeding device 16, on the other hand, there is a virtually magnet-free zone of the magnetic cylinder 8. This magnet-free zone has the effect that the plate edge firmly clamped in the clamping device 20 springs away from the magnetic cylinder 8 the instant that the clamping device 20, arranged in an axially parallel cylinder channel 45 underneath a circular circumferential line 46 of the magnetic cylinder 8, is opened sufficiently far enough. The fact that the plate edge springs away is advantageous with regard to the automated removal of the printing plate 3 from the magnetic cylinder 8, in particular, when the plate feeding device 16 is a constituent part of an automatic plate-feeding and removing device. In addition, the magnet-free zone indicates that the front edge of the printing plate 3 is virtually uninfluenced magnetically when the printing plate 3 is placed in-register against the magnetic cylinder 8, so that contact errors caused by magnetic forces are avoided. As can best be seen from Fig. 5, only the front edge of the plate, formed by the edge strip 6, is firmly clamped, and an unclamped rear edge 47 of the printing plate 3 is held on the magnetic cylinder 8 only by the action of the magnet 40.

Appellants stated on page 24 of the specification, line 8, that, in an embodiment which differs from the exemplary embodiment shown with the freely trailing plate edge 47, the rear edge of the plate can be firmly clamped in a further clamping device in a manner comparable to the clamping of the front plate edge.

It is further stated on page 24 of the specification, line 14, that, although, in the exemplary embodiment shown, when the printing plate 3 is fixed to the magnetic cylinder 8, the edge strip 6 is subsequently elastically deformed from the circular circumferential line 46, changing into a secant following the clamping support 21, and is bent over into the cylinder channel 45, this elastic deformation returns completely after the clamping device 20 has been opened, so that the printing plate 3, both before and after being fixed to the magnetic cylinder 8, has a leading edge which is stretched and not bent over, and a similar trailing edge. This flat form of the printing plate 3 is advantageous with respect to the ability thereof to be stacked and clamped repeatedly onto the magnetic cylinder 8.

Appellants explained on page 25 of the specification, line 2, that, at this point, mention should be made of the fact that, in contrast with the exemplary embodiment shown, a cylinder

holding the printing plate 3 by electrostatic attraction can also be provided instead of the magnetic cylinder 8. This cylinder has a clamping device corresponding to the clamping device 20 and, instead of the magnets 35 to 40, has a circumferential surface which can be charged up with an electrical charge. The printing plate 3 and, in particular, the carrier layer 4 thereof is provided with a charge having a polarity opposite to that of the circumferential surface of the cylinder. Between the printing plate 3 and the carrier layer 4, on the one hand, and the circumferential surface of the cylinder, on the other hand, a film-like electrical insulator is inserted as an interlayer between the printing plate 3 and the cylinder.

Appellants further explained on page 25 of the specification, line 18, that the magnetic cylinder 2 in the imaging machine 1 shown in Fig. 1 is completely identical in terms of function and construction with the magnetic cylinder 8 of the printing machine 9. For example, both magnetic cylinders 2 and 8 have the same diameter and are equipped with identical register systems. In addition, a plate feeding device corresponding to the plate feeding device 28 is also assigned to the magnetic cylinder 2. The illustration of Figs. 3 to 7 and the description of the magnetic cylinder 8 given in relation to Figs. 3 to 7 can therefore readily be transferred to the

magnetic cylinder 2, so that the latter does not have to be shown and described again in detail. The possibility of this transfer is indicated in Figs. 3 to 7 by a reference symbol "(2)" placed after the reference numeral 8 and representing the magnetic cylinder 2. Likewise, the embodiments mentioned with regard to modifications of the magnetic cylinder 8 but not shown can be transferred to the magnetic cylinder 2, for example, in the sense that the latter can likewise be replaced by the electrostatically attracting cylinder.

References Cited:

U.S. Patent Number	Patentee	Date
3,670,646	Welch, Jr.	JUN 20, 1972
4,116,594	Leanna et al.	SEP 26, 1978
5,947,028	Montgomery et al.	SEP 7, 1999

Issues

1. Whether or not claims 5 and 7-11 are obvious over Montgomery et al. (U.S. Patent No. 5,947,028) (hereinafter Montgomery") in view of Leanna et al. (U.S. Patent No. 4,116,594) (hereinafter "Leanna") under 35 U.S.C. §103(a).

Grouping of Claims:

Claim 5 is independent. Claims 7-11 depend on claim 5 . The patentability of claims 7-11 is not separately argued. Therefore, claims 7-11 stand or fall with claim 5.

Arguments:

Claim 5 calls for, *inter alia*, an imaging assembly, having a printing plate, and an imaging machine for setting an image on the printing plate, the printing plate formed of a magnetically attractable material, the imaging machine including **a magnetic cylinder magnetically holding the printing plate firmly during the setting of an image thereon**, the **magnetic cylinder having at least one magnet** for attracting the printing plate magnetically and **being selected from the group consisting of permanent magnets and electromagnets, the magnetic cylinder having a register system aligning the printing plate, and the printing plate having substantially U-shaped register cut-outs cooperating with the register system**. (emphasis added)

It is noted that while the rejection of the claims is based on Montgomery in view of Leanna, the Examiner has referred to Welch Jr. et al. (U.S. Patent 3,670,646) in at least two

instances in her statements regarding the rejection. Since Welch Jr. is not mentioned in the rejection in the first sentence of item 5 on page 3 of the final Office Action dated November 21, 2003, appellants assume that the reference to Welch Jr. is a typographical error and that the Examiner intended to refer to Leanna instead of Welch, Jr. Accordingly, appellants will treat the rejection as based on Montgomery in view of Leanna.

Montgomery discloses printing, printing plates, and drums therefor as disclosed in col. 1, lines 5 et seq. In particular, Montgomery discloses apparatus for holding metal printing plates on a rotating drum by the use of a vacuum. Holding the plates in place on the drum is facilitated by bending at least one edge of the plate to approximately match the drum curvature. Montgomery does not disclose or suggest substantially U-shaped cut-outs for aligning the printing plate accurately in position relative to the magnetic cylinder, before it is firmly clamped in place, according to the present claimed invention. Montgomery is silent on and does not disclose the use of magnets. The Examiner acknowledges that **Montgomery is silent** with respect to primary features of claim 5, namely, "the particular details of the magnetic drum and whether the magnetic material in the cylinder includes one of a permanent magnet and electromagnet"

and "whether the drum includes a register system for aligning the printing plate with U-shaped register cut-outs." Thus, the deficiencies of the primary Montgomery reference are readily apparent.

Contrary to Montgomery, Leanna discloses embossing, embossing plates, and embossing rollers therefor. Leanna discloses an embossing apparatus for applying a continuous pattern to webs of material such as paper and a method for producing an embossing surface.

In item 5 of the above-identified final Office Action, the Examiner incorrectly interchangeably uses the terms "printing/embossing plate" and "magnetic printing/embossing drum", which is based on an erroneous assumption that printing and embossing are, by their nature, identical processes and therefore interchangeable.

This assumption is entirely incorrect. The combination of Montgomery and Leanna is based purely on hindsight reconstruction of the prior art in view of appellants' disclosure. One skilled in the art would not consider combining the references, because the printing of Montgomery and embossing of Leanna are completely different processes by their very nature and completely different equipment is

required for the respective processes. Furthermore, Leanna actually teaches away from combining Leanna with Montgomery. Leanna specifically acknowledges that "**printing and embossing differ** both as regards equipment employed and the nature of the process" (emphasis added) (see col. 2, lines 5-8), which further supports appellants arguments.

The Examiner's acknowledgements that Montgomery is **silent** with respect to claimed features of the present invention further supports appellants' argument that there is no reason to arbitrarily take from Leanna the features of a "magnetic cylinder magnetically holding the printing plate firmly during the setting of an image thereon, the magnetic cylinder having at least one magnet for attracting the printing plate magnetically and being selected from the group consisting of permanent magnets and electromagnets" and "the magnetic cylinder having a register system aligning the printing plate, and the printing plate having substantially U-shaped register cut-outs cooperating with the register system register system" and arbitrarily add them to Montgomery as proposed by the Examiner, but for appellants' disclosure. Therefore, it is submitted that the proposed combination of references is improper. Further, even if the references were combinable, the resulting structure still would not meet the claim limitations.

It is well settled that almost all claimed inventions are but novel combinations of old features. The courts have held in this context, however, that when "it is necessary to select elements of various teachings in order to form the claimed invention, we ascertain whether there is any suggestion or motivation **in the prior art** to make the selection made by the applicant". Interconnect Planning Corp. v. Feil, 227 USPQ 543, 551 (Fed. Cir. 1985) (emphasis added). "Obviousness can not be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination". In re Bond, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990). "Under Section 103 teachings of references can be combined **only** if there is some suggestion or incentive to do so." ACS Hospital Systems, Inc. v. Montefiore Hospital et al., 221 USPQ 929, 933, 732 F.2d 1572 (Fed. Cir. 1984) (emphasis in original). "Although a reference need not expressly teach that the disclosure contained therein should be combined with another, the showing of combinability, in whatever form, must nevertheless be '**clear and particular.**'" Winner Int'l Royalty Corp. v. Wang, 53 USPQ2d 1580, 1587, 202 F.3d 1340 (Fed. Cir. 2000) (emphasis added; citations omitted); Brown & Williamson Tobacco Corp. v. Philip Morris, Inc., 56 USPQ2d 1456, 1459 (Fed. Cir. 2000). Appellants believe that there is no "clear and particular" teaching or suggestion in Montgomery to incorporate the

features of Leanna and moreover, that **Leanna** actually **teaches not to incorporate the features in Montgomery**, because Montgomery and Leanna are non-analagous art.

In establishing a *prima facie* case of obviousness, it is incumbent upon the Examiner to provide a reason why one of ordinary skill in the art would have been led to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion, or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the ***applicants'*** disclosure. See, for example, Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1052, 5 USPQ2d 1434, 1439 (Fed. Cir. 1988). The Examiner has not provided the requisite reason why one of ordinary skill in the art would have been led to modify Montgomery or to add Leanna's features to Montgomery to arrive at the claimed method of using a **printing** plate according to the present invention. Further, the Examiner has not shown the requisite motivation from some teaching, suggestion, or inference in Montgomery or from knowledge available to those skilled in the art.

Appellants respectfully believe that any teaching, suggestion, or incentive possibly derived from the prior art is only present with hindsight judgment in view of the instant application. "It is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps... The references **themselves** must provide some teaching whereby the applicant's combination would have been obvious." In re Gorman, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991) (emphasis added). Appellants submit that in the present instance, no such teaching is present in the cited references.

Clearly, the references do not show "a magnetic cylinder magnetically holding the printing plate firmly during the setting of an image thereon, the magnetic cylinder having at least one magnet for attracting the printing plate magnetically and being selected from the group consisting of permanent magnets and electromagnets, the magnetic cylinder having a register system aligning the printing plate, and the printing plate having substantially U-shaped register cut-outs cooperating with the register system" as recited in claim 5 of the instant application.

Furthermore, in the Advisory Action dated March 29, 2004, the Examiner has stated that the request for reconsideration does not place the case in condition for allowance. Specifically, it is the Examiner's position "that embossing and printing are...considered analagous", notwithstanding that Leanna specifically teaches that they are different and non-analagous. The Examiner further is of the opinion "that it would have been obvious...to provide a specific magnetic drum/plate arrangement as taught by Leanna in the device of Montgomery to provide the well recognized advantages of that arrangement..." and also that "...one of ordinary skill in the art would also recognize that the use of registration system such as taught by Leanna insures proper alignment of the printing/embossing surfaces on the plate." Appellants submit that the Examiner's statements and conclusions, while well intended, are incorrect and arbitrary without proper support in the cited prior art. The Examiner is improperly reconstructing the prior art after having read appellants' claims. The Examiner's statements are pure conjecture and wishful thinking in order to find a basis for rejecting the claims. For the reasons discussed herein, the statements are considered insufficient to support the rejection.

The Honorable Board is therefore respectfully urged to reverse the final rejection of the Primary Examiner.

Respectfully submitted,

For Appellants

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Appendix - Appealed Claims:

5. An imaging assembly, comprising a printing plate, and an imaging machine for setting an image on said printing plate, said printing plate formed of a magnetically attractable material, said imaging machine including a magnetic cylinder magnetically holding said printing plate firmly during the setting of an image thereon, said magnetic cylinder having at least one magnet for attracting said printing plate magnetically and being selected from the group consisting of permanent magnets and electromagnets, said magnetic cylinder having a register system aligning said printing plate, and said printing plate having substantially U-shaped register cut-outs cooperating with said register system.

7. The assembly according to claim 5, wherein said magnetic cylinder has at least one clamping device firmly clamping said printing plate.

8. The assembly according to claim 5, wherein said magnet for said magnetic cylinder comprises at least one permanent magnet magnetically attracting said magnetically attractable printing plate.

9. The assembly according to claim 5, wherein said imaging machine is a plate-exposing machine.

10. The assembly according to claim 5, wherein said imaging machine is a plate-developing machine.

11. The assembly according to claim 5, wherein said imaging machine is a plate-engraving machine.